

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1417 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE
AND
HONOURABLE MR.JUSTICE H.B.ANTANI**

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| 1 Whether Reporters of Local Papers may be allowed to see the judgment? | NO |
| 2 To be referred to the Reporter or not? | NO |
| 3 Whether Their Lordships wish to see the fair copy of the judgment? | NO |
| 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder? | NO |
| 5 Whether it is to be circulated to the Civil Judge? | NO |

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**SUMITRA KUPER
WIDOW OF HARENDRASINH UDESINH
AND OTHERS - Appellants
Versus**

AMBALAL HARDAYANSINH YADAV AND ANOTHER - Defendants

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Appearance :

MR BHARAT JANI for the Appellants.
RULE NOT RECD BACK for Defendants : 1 - 2.
MR RAJNI H MEHTA for Defendant : 2.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**and****HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 31/07/2007**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)**

1. The distraught claimants - heirs of Harendrasinh Udesinh Rahevar - have preferred the present appeal under Section 173 of the Motor Vehicles Act, 1994 against the judgment and award passed by Motor Accident Claims Tribunal, Ahmedabad dated 31-07-2007 in Motor Accident Claims Petition No. 83 of 1997 partly allowing the Claim Petition and awarding compensation to the claimants to the tune of Rs. 4.52 Lakhs with interest at the rate of 9% p.a. from the date of petition till realization.

2. The short facts giving rise to the present appeal are as under:

Deceased Harendrasinh Udesinh Rahevar, who was going on his Hero Honda Motor Cycle bearing registration No. GJ-1-F-9888 on the road from Shamlaji towards Motipura, met with the accident at about 5.30 AM with the truck bearing Registration No. RNG 919. The collision took place near 3 roads of Motipura. The deceased, as a result of the said

accident, fell down on the road and succumbed to the injuries. The claimants have, on the basis of the aforesaid accident, claimed compensation of Rs. 16 Lakhs from the opponents with costs and interest.

3. The Tribunal framed the issues vide Exh. 19, and after going through the documentary evidence and the oral evidence adduced by the claimants, held that deceased succumbed to the injuries as a result of the accident with the truck bearing registration No. RNG 919. The deceased was proceeding on his Hero Honda Motor Cycle at moderate speed, but the Driver, who was coming from the opposite direction with full speed, collided with the Motor Cycle of Harendrasinh Udesinh Rahevar, and as a result thereof, the deceased fell down on the road and succumbed to the injuries. The learned Judge, after taking into consideration the complaint as well as the oral deposition, held that the Driver of the Truck was negligent in driving the offending truck at the time of accident and as a result of which, the deceased sustained fatal injuries. The learned Judge further, after considering the oral evidence and the

documentary evidence, held that deceased was about 32 years old at the time of the accident and working as a Driver-cum-Peon in Bank of India and his monthly salary was Rs. 4,800/-. After considering the oral deposition and the Salary Certificate produced at Exhs. 42 and 43 and taking into account the future prospects of the deceased had he remained alive, the learned Judge calculated the income of the deceased as Rs. 9,600/- per month and by taking the mean of two salaries of Rs.4,800/- as well as Rs.9,600/- as Rs.7,200/- and deducting $1/3^{\text{rd}}$ amount for personal expenses of the deceased and calculating the loss of dependency of the appellant as Rs.4,800/- per month, the learned Judge considered the income of the deceased as Rs.7,200/- per month. However, wife of the deceased was appointed in the Bank as a Clerk on compassionate ground after the death of her husband. Thus, appellant No. 1 was getting more salary than the salary earned by the deceased. Therefore, the learned Judge sliced down $1-1/2$ of the amount from the said salary and thus, considered Rs. 2,400/- per month as the loss of dependency suffered by the appellants per month and yearly loss would come to

Rs. 28,000/- . Taking into consideration the age of the deceased and other uncertainties of life, the learned Judge applied the multiplier of 15 to the yearly loss suffered by the appellants and, thus, the total dependency is calculated as Rs. 4.32 Lakhs. However, an amount of Rs. 10,000/- was awarded to the appellant towards the loss of expentancy of life and Rs. 10,000/- towards the loss of consortium suffered by appellant No. 1. Thus, the learned Tribunal awarded to total compensation of Rs. 4.52 Lakhs to the appellants with interest at the rate of 9% per annum from the date of petition till realization.

4. Mr. B. G. Jani, learned Advocate representing the appellant, submitted that since there is no dispute about the occurrence of accident, he argued only with regard to the award of compensation which can be given to the appellants. The learned Advocate submitted that after considering the salary of deceased as Rs.7,200/- per month, including his future prospects and deducting 1/3rd amount from the same, it would come to Rs.4,800/- per month. The same can be considered as loss of

dependency suffered by the claimants. The learned Advocate submitted that the yearly loss of dependency would thus come to Rs.57,600/- and if the multiplier of 15 is made applicable, then it would come to Rs. 8.64 Lakhs and hence, the same may be awarded to the claimants as loss of dependency. Further, an amount of Rs. 10,000/- be awarded to the claimants towards the loss of expectancy of life and Rs. 10,000/- towards the loss of consortium suffered by appellant No. 1. Thus, taking into account various heads, the total amount would come to Rs. 8.64 Lakhs. Hence, the same may be awarded to the claimants.

5. Mr. Rajni H. Mehta, learned Advocate representing the Insurance Company and the owner, submitted that there is no dispute about the occurrence of accident and since there is no dispute about the rash and negligent driving by the Driver of the truck, the compensation which can be awarded to the claimants is required to be considered. Taking into account the oral deposition and the documentary evidence produced in the present case, the learned Advocate submitted that the salary of the deceased is

required to be considered as Rs.4,800/- per month. If $\frac{1}{3}$ rd amount is deducted from the aforesaid income towards the personal expenses and other imponderable factors of life, then the same would come to Rs. 3,600/- per month. The said figure can safely be considered as loss of dependency suffered by the claimants per month and yearly loss of dependency would come to Rs. 42,200/-. The deceased, at the time of his death, was approximately of 32 years of age. Therefore, considering the reasonable multiplier of 13 to the yearly loss of dependency suffered by the claimants is pressed into service, then the same would come to Rs. 5,48,600/-. Hence, the same may be awarded to the claimants towards the loss of dependency. Further, an amount of Rs. 10,000/- be awarded to the claimants for the loss of expectancy of life and Rs. 10,000/- towards the loss of consortium suffered by appellant No. 1 be also awarded to the claimants. Thus, the total amount of compensation would come to Rs. 5,68,600/- and the same may be awarded to the claimants as the total compensation with interest at the rate of 9% per annum from the date of the petition till realization.

6. This Court has heard Mr. B. G. Jani, learned Advocate for the appellants, and Mr. R. H. Mehta, learned Advocate for the Insurance Company, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record of the case.

7. The deceased, who was proceeding on his Hero Honda Motor Cycle bearing Registration No. GJ-1-F-9888 on the road from Shamlaji to Motipura, met with the accident with the truck bearing registration No. RNG-919 which was coming from the opposite direction with full speed. The deceased, as a result of the aforesaid accident, sustained fatal injuries and died on the spot. The learned Advocate for the claimants as well as the opponents have fairly submitted that they do not dispute the occurrence of accident as well as rash and negligent driving by the Driver of the offending truck. Therefore, we do not decide the issue of rash and negligent driving.

8. As regards the compensation which can be awarded to the claimants, we have considered the oral

deposition adduced by the Udesinh Harendrasinh Rahevar at Exh. 31, Sumitra Harendrasinh at Exh. 35 and Manager of Bank of India Pravinkumar Ambashanker Mehta at Exh. 40. Taking into account the evidence adduced by the claimants as well as the Salary Certificate issued by Bank of India vide Exhs. 42 and 43, the salary of the deceased was approximately Rs. 4,800/- per month. The Manager, who has given the deposition vide Exh. 40, has stated that had the deceased remained alive and continued in service, then he would have retired somewhere in 2022. We have taken into consideration the future prospects of deceased at the time of calculating the loss of dependency suffered by the appellants. Thus, taking into consideration the aforesaid aspect, the salary of the deceased is considered by the learned Judge as Rs.7,200/- per month and that figure can fairly be considered as loss of dependency suffered by the appellants. In view of the principle laid down by the Hon'ble Apex Court in **Helen C. Rebello And Others Vs. Maharashtra State Road Transport Corporation, 1999 ACJ 10**, wherein the question which came up for consideration was whether life insurance of the deceased is to be deducted from the claimants'

compensation receivable under the Motor Vehicles Act, 1939, the Hon'ble Apex Court, after considering the evidence on record, held that the compensation payable under the life insurance policy is contractual and the amount under life insurance is received either by the insured after maturity or by his heirs after his death which may be accidental or otherwise on account of the contract for which insured contributes in the form of premiums and, therefore, any amount received or receivable not only on account of the accidental death but that which would have come to the claimants even otherwise, could not be construed to be the pecuniary advantage liable for deduction. Thus, considering this ratio, 1/2 figure cannot be deducted from the income of the deceased for the purpose of calculating the loss of dependency. However, 1/3rd amount could be deducted from the income of the deceased towards personal expenses and other imponderable factors so as to decide about the dependency suffered by the appellants. If we slice down 1/3rd amount from the income of the deceased, which is calculated as Rs.7,200/- per month, then the same would come to Rs.4,800/- per month. The said figure can be considered as loss of dependency suffered by the

appellants per month and yearly loss of dependency would come to Rs. 57,600/-. The deceased on the date of the accident was approximately 33 years of age and, therefore, reasonable multiplier of 15 is required to be pressed into service to the yearly loss of dependency suffered by the claimants and if the multiplier of 15 is made applicable, then the total figure would come to Rs. 8.64 Lakhs. The same, in our view, can be awarded to the appellants towards the loss of dependency. Further, Rs.10,000/- is also required to be awarded to the claimants towards the loss of expectancy and also Rs.10,000/- towards the loss of consortium to the claimants. Thus, taking into account the aforesaid figure, the total amount would come to Rs. 8.84 Lakhs. However, as the Tribunal has already awarded the said amounts of Rs. 10,000/- each towards the loss of expectancy and the loss of consortium, we award the difference of amount which comes to Rs. 4.12 Lakhs with interest at the rate of 9% from the date of the petition till realization.

9. In view of the foregoing discussion, the appeal preferred by the appellants is partly allowed. The appellants are awarded additional amount of

Rs.4.32 Lakhs towards the compensation with interest at the rate of 9% from the date of the petition till realization. Decree be drawn in terms of the said order.

[ANIL R. DAVE, J.]

[H. B. ANTANI, J.]

/shamnath